

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

BLUE CROSS BLUE SHIELD OF
MICHIGAN,

Plaintiff/Counter-Defendant,

v.

BOND PHARMACY, INC. d/b/a
ADVANCED INFUSION SOLUTIONS,

Defendant/Counterclaimant.

Case No. 21-cv-10076

Hon. Denise Page Hood

Magistrate Judge Kimberly G. Altman

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**PLAINTIFF/COUNTER-DEFENDANT BLUE CROSS BLUE SHIELD OF
MICHIGAN'S ANSWER TO DEFENDANT-COUNTERCLAIMANT'S
AMENDED COUNTERCLAIM**

NOW COMES Plaintiff/Counter-Defendant Blue Cross Blue Shield of Michigan (“BCBSM”), by and through its attorneys, Dickinson Wright PLLC, and hereby files its Answer to Defendant/Counterclaimant Bond Pharmacy, Inc. d/b/a Advanced Infusion Solutions’ (“AIS”) Amended Counterclaim.

1. Denied.
2. Denied.
3. Denied.
4. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.
5. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.
6. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.
7. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.
8. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.
9. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

10. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

11. BCBSM admits only that it contracted with AIS. BCBSM denies the remainder of the allegations in this paragraph.

12. Denied.

13. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

14. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

15. Denied.

16. BCBSM admits only that for months after contracting with AIS, BCBSM paid certain AIS claims. However, BCBSM later learned that certain claims were fraudulent and/or were claims submitted by AIS wherein AIS performed no services, and thus BCBSM stopped paying them.

17. Denied.

18. Admitted.

19. BCBSM admits only that it refused to process and pay AIS's fraudulent claims, and refused to pay claims submitted by AIS wherein AIS performed no services.

20. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

21. BCBSM admits that it terminated the provider agreement with AIS, and asserted fraud and other claims against AIS. As to the remainder of the allegations, BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of these allegations.

22. Denied.

23. Denied.

PARTIES

24. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

25. Admitted.

26. Admitted.

27. Admitted.

JURISDICTION AND VENUE

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted.

34. Denied.

35. Admitted.

36. BCBSM admits only that venue is proper in this District. The remainder of the allegations are denied.

37. Denied.

FACTUAL ALLEGATIONS

38. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

39. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

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74. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

75. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

The Provider Agreement

76. BCBSM admits only that in 2018 BCBSM and AIS entered into a Home Infusion Therapy Facility Participation Agreement (the “Participation Agreement”), which expressly incorporates by reference, *inter alia*, BCBSM’s Provider Manual, and its Medical Policy (together, the “Agreement”). The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

77. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

78. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

79. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

80. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

81. BCBSM admits only that it presented to AIS a proposed Agreement. BCBSM denies the remainder of these allegations.

82. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms. By way of further answer, BCBSM denies that there is any reference to HIPAA in the provisions cited in Paragraph 82 of the Amended Counterclaim.

83. BCBSM denies that there is any reference to HIPAA in the provisions cited in Paragraph 82 of the Amended Counterclaim. Answering further, BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

84. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

85. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

86. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

87. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

88. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

89. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms. By way of further answer, BCBSM denies that the “NHIA Standards” are part of the Agreement, or are otherwise relevant.

90. Denied.

91. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

92. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

93. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms. By way of further answer, BCBSM denies that the “NHIA Standards” are part of the Agreement, or are otherwise relevant.

94. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

95. Denied.

96. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

By way of further answer, BCBSM denies that the “NHIA Standards” are part of the Agreement, or are otherwise relevant.

97. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

98. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

99. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

100. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

By way of further answer, BCBSM denies that the “NHIA Standards” are part of the Agreement, or are otherwise relevant.

101. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

By way of further answer, BCBSM denies that the “NHIA Standards” are part of the Agreement, or are otherwise relevant.

102. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

103. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

104. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

105. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms. By way of further answer, BCBSM denies that the “NHIA Standards” are part of the Agreement, or are otherwise relevant.

106. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms. By way of further answer, BCBSM denies that the “NHIA Standards” are part of the Agreement, or are otherwise relevant.

107. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

108. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

109. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

110. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

111. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

112. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

113. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

114. Denied.

115. Denied.

116. Denied.

117. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

118. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

119. BCBSM admits only that for months after contracting with AIS, BCBSM paid certain AIS claims. However, BCBSM later learned that certain claims were fraudulent and/or were claims submitted by AIS wherein AIS performed no services, and thus BCBSM stopped paying them.

120. BCBSM admits only that it refused to pay fraudulent claims submitted by AIS and/or claims for which AIS provided no service, and that BCBSM demanded recoupment of monies previously paid with regard to such claims. The remainder of the allegations are denied.

121. Denied as stated.

122. BCBSM admits that it requested documents from AIS; BCBSM denies that AIS provided the requested documents.

123. Denied as stated.

124. Denied as stated. Moreover, Exhibit 2 to the Amended Counterclaim is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

125. Exhibit 2 to the Amended Counterclaim is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

126. Exhibit 2 to the Amended Counterclaim is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

127. Exhibit 2 to the Amended Counterclaim is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

128. BCBSM admits only that it refused to pay fraudulent claims submitted by AIS and/or claims for which AIS provided no service.

129. Exhibit 2 to the Amended Counterclaim is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

130. BCBSM admits only that it received the October 16, 2020 letter from AIS's counsel. BCBSM denies, in material part, the substance thereof.

131. BCBSM admits only that it received the October 16, 2020 letter from AIS's counsel. BCBSM denies, in material part, the substance thereof.

132. Denied.

133. BCBSM admits only that it received the October 16, 2020 letter from AIS's counsel. BCBSM denies, in material part, the substance thereof.

134. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

135. BCBSM admits that it terminated the Agreement. BCBSM denies that its breach of contract and fraud claims against AIS are baseless.

136. BCBSM denies that Exhibit 6 to the Amended Counterclaim is relevant, given that the Agreement here at issue, and the provider agreement for the referenced "other Blue Cross Blue Shield entities" were materially different. BCBSM further denies that AIS's billing practices under the Agreement were proper.

137. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

138. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

139. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

140. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

141. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

142. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

143. Denied.

144. Denied.

145. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

CAUSES OF ACTION

COUNT I

(Breach of Contract for Claims Governed by Provider Agreement)

146. BCBSM incorporates by reference the preceding paragraphs as if fully set forth herein.

147. BCBSM admits that in 2018 BCBSM and AIS entered into the Participation Agreement, which expressly incorporates by reference, *inter alia*, BCBSM's Provider Manual, and its Medical Policy.

148. Denied.

149. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

150. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

151. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

152. Denied.

153. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

154. The Agreement is a written document, the terms of which speak for themselves. BCBSM denies any allegation inconsistent with those written terms.

155. BCBSM admits only that it refused to pay fraudulent claims submitted by AIS and/or claims for which AIS provided no service, and that BCBSM demanded recoupment of monies previously paid with regard to such claims.

156. BCBSM admits only that it refused to pay fraudulent claims submitted by AIS and/or claims for which AIS provided no service, and that BCBSM demanded recoupment of monies previously paid with regard to such claims.

157. Denied.

158. Denied.

159. Denied.

160. Denied.

161. Denied.

COUNT II
(Unjust Enrichment)

162. BCBSM incorporates by reference the preceding paragraphs as if fully set forth herein.

163. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

164. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

165. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

166. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

167. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

168. Denied.

169. Denied.

170. Denied.

COUNT III
(Declaratory Judgment Regarding Out of Network Claims and Plans Pursuant to 28 U.S.C. § 2201)

171. BCBSM incorporates by reference the preceding paragraphs as if fully set forth herein.

172. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

173. BCBSM admits only that it refused to pay fraudulent claims submitted by AIS and/or claims for which AIS provided no service, and that BCBSM demanded recoupment of monies previously paid with regard to such claims. The remainder of the allegations are denied.

174. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

175. Denied.

176. BCBSM lacks knowledge or information sufficient to form a belief as to the truth or falsity of this allegation.

AFFIRMATIVE DEFENSES

1. The Amended Counterclaim fails to state valid causes of action for which relief can be granted.
2. AIS is entitled to no equitable relief, as it comes to Court with unclean hands.
3. The Amended Counterclaim is barred by the doctrines of waiver, estoppel, and/or other variants of estoppel as applicable.
4. The Amended Counterclaim is barred by the Provider Agreement, the Provider Manual and/or the Medical Policy (together, the “Agreement”).
5. The Amended Counterclaim is barred by AIS’s first material breach of the Agreement.
6. AIS’s claims are barred because it fails to satisfy mandatory conditions precedent to contract performance.
7. AIS’s claims are barred, in whole or in part, because BCBSM is entitled to any and all credits, set-offs or other legal or equitable defenses which may obviate or mitigate AIS’s damages, if any.
8. AIS has failed to mitigate damages.
9. AIS’s claims are barred, in whole or in part, under the applicable statute of limitations.

BCBSM reserves the right to rely on or assert other defenses that may become available or apparent throughout the course of this action.

WHEREFORE, BCBSM respectfully requests that this Honorable Court dismiss with prejudice the Amended Counterclaim, and award to BCBSM its costs, fees and such other and further relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Scott R. Knapp
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Nolan J. Moody (P77959)
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Dated: June 27, 2024

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2024, Counterclaimant's counsel was served with the foregoing document through the Court's Electronic Filing System.

/s/ Scott R. Knapp
Scott R. Knapp